



0000072222

ORIGINAL

25GM

## BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL  
CHAIRMAN

JIM IRVIN  
COMMISSIONER

MARC SPITZER  
COMMISSIONER

IN THE MATTER OF:

ARTHUR ANDERSEN L.L.P.  
501 North 44<sup>th</sup> Street – 300  
Phoenix, Arizona 85008,

Respondent.

DOCKET NO. S-03386A-00-0000

**SIXTH**  
**PROCEDURAL ORDER**

## BY THE COMMISSION:

On September 27, 2000, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Arthur Andersen L.L.P. ("Andersen" or "Respondent") in which the Division alleged multiple violations of the Arizona Securities Act ("Act") by aiding and abetting in the fraudulent offer and sale of various securities products by the Baptist Foundation of Arizona ("BFA") and related entities.

The Respondent was duly served with a copy of the Notice.

On October 3, 2000, Andersen filed a request for hearing.

On October 10, 2000, by Procedural Order, a pre-hearing conference was scheduled for October 18, 2000.

On October 17, 2000, Respondent filed a Motion to Dismiss.

On October 18, 2000, a pre-hearing conference was held at the Commission's offices in Phoenix, Arizona. The Respondent and Division were represented by counsel. Other pending proceedings arising from Andersen's involvement with the Baptist Foundation of Arizona and the briefing of motions were discussed.

On October 25, 2000, Respondent filed a Motion to Stay Proceeding ("Motion to Stay"). Respondent claimed that its Motion to Stay was founded upon due process rights protected by the Fourteenth Amendment to the United States Constitution and Article Two, Section Four of the Arizona Constitution. Respondent also presented a number of other arguments in support of its

1 Motion to Stay.

2 On October 31, 2000, by Procedural Order, the Commission memorialized certain filing dates  
3 established by agreement of the parties in a teleconference on October 30, 2000, with respect to the  
4 Motion to Stay and Andersen's Motion to Dismiss and scheduled oral argument on the Motion to  
5 Dismiss for January 4, 2001, if the Motion to Stay was not granted.

6 On November 8, 2000, the Division filed its Response to Andersen's Motion to Stay. In its  
7 Response, the Division argued that Andersen had been unable to show that its rights would be  
8 substantially prejudiced if a stay was not granted.

9 On November 17, 2000, Andersen filed its Reply in support of the Motion to Stay and pointed  
10 out that the Division was requesting the Commission to ignore the need for testimony from former  
11 top senior managers of BFA and other related parties with whom Andersen had purportedly acted  
12 with complicity in carrying out the fraud alleged in the Notice.

13 On November 29, 2000, the Commission, by Procedural Order, approved Andersen's Motion  
14 to Stay for a period of at least 60 days and vacated the hearing date of January 4, 2001, for oral  
15 argument on Andersen's Motion to Dismiss. A status conference was also ordered to be held on  
16 March 1, 2001.

17 On December 11, 2000, the Division filed a Motion to Lift Stay and Approve Filing of  
18 Complaint in Superior Court ("Motion to Lift Stay") arguing that the stay was contrary to law and  
19 created a "dangerous precedent" which would adversely affect future Division cases. In support of  
20 its Motion to Lift Stay the Division, through the Attorney General, seeks authorization to file a civil  
21 complaint in the Maricopa County Superior Court on behalf of the Commission against Andersen.  
22 Besides the allegations of securities fraud already raised in the Notice, the civil complaint would  
23 include additional claims for consumer fraud pursuant to the Arizona Consumer Fraud Act ("CFA").  
24 With the inclusion of the allegations involving consumer fraud, the State will widen the action and in  
25 a court action will be enabled to seek even more sanctions against Andersen than is available under  
26 the Commission's jurisdiction in an administrative action. Additionally, the claims under the CFA  
27 will provide an additional avenue of recovery on behalf of those injured by Andersen's alleged  
28 actions involving its services to BFA.

1 On December 22, 2000, Andersen filed its Response in Opposition ("Response") to the  
2 Division's Motion to Lift Stay arguing that the stay approved on November 29, 2000 should not be  
3 lifted because the Division's Motion to Lift Stay was a procedurally incorrect filing and that the stay  
4 was supported by the law and that it would not establish a "dangerous precedent". Respondent  
5 further argues that it presumes the Division intends to pursue two separate actions against Andersen if  
6 the stay is lifted, one in Superior Court and the instant proceeding before the Commission implying  
7 that this will increase Andersen's litigation burden arising from its involvement with BFA.

8 On January 5, 2001, the Division filed its Reply to Andersen's Response pointing out that  
9 Andersen had "previously argued that the Superior Court was the appropriate forum for a case of this  
10 nature" and that its Motion to Lift Stay was appropriate in this instance. Further, the Division states  
11 that, upon its Motion to Lift Stay being granted and approval being granted to file an action against  
12 Andersen in Superior Court, the Division and the Attorney General's office will dismiss the pending  
13 administrative action and proceed further with a civil action against Andersen in Superior Court.

14 Accordingly, after reviewing the arguments of the Division and the Respondent with respect  
15 to the Division's Motion to Lift Stay, it is concluded that the Division's filing is proper in this  
16 instance. Further, the Division indicates that if the stay herein is vacated and approval granted to file  
17 the complaint that the Attorney General will institute, on behalf of the Commission, a civil action in  
18 the Maricopa County Superior Court which will include both the allegations of securities fraud  
19 originally raised in this proceeding along with additional allegations of involving consumer fraud  
20 being added to the action to provide additional avenues of recovery for parties injured in the BFA  
21 offerings. The Division's Reply makes it clear that Andersen will not have to defend itself against  
22 the Division's allegations at the Commission and in the Superior Court. The administrative  
23 proceeding will be dismissed and the Commission's prosecution of the action herein will be  
24 addressed in the civil action to be brought in the Superior Court. It is clearly within the  
25 Commission's discretionary power to grant the relief requested by the Division in this instance and  
26 by lifting the stay the Division will be able to pursue its action against Andersen in the Superior  
27 Court instead of in an administrative proceeding. Therefore, the stay should be lifted and the action  
28 should be brought in the Maricopa County Superior Court as set forth in the copy of the Complaint

1 attached to the Motion to Lift Stay.

2 IT IS THEREFORE ORDERED that the Motion to Lift Stay and Approve Filing of  
3 Complaint in Superior Court filed by the Securities Division be, and is hereby, granted.

4 IT IS FURTHER ORDERED that the Securities Division shall take whatever steps it deems  
5 necessary to bring the proposed civil action against Arthur Andersen L.L.P. in the Maricopa County  
6 Superior Court.

7 IT IS FURTHER ORDERED that the status conference scheduled for March 1, 2001, at 9:30  
8 a.m., be, and is hereby, vacated.

9 DATED this 13<sup>th</sup> day of January, 2001.

10  
11  
12   
13 MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

14  
15 Copies of the foregoing mailed/delivered  
this 12<sup>th</sup> day of January, 2001 to:

16  
17 Don P. Martin  
Edward F. Novak  
18 QUARLES & BRADY STREICH LANG  
Renaissance One  
Two North Central Avenue  
19 Phoenix, Arizona 85004-2391  
Attorneys for Arthur Andersen L.L.P.

20  
21 Robert A. Zumoff  
Assistant Attorney General  
ARIZONA ATTORNEY GENERAL'S OFFICE  
22 1275 West Washington Street  
Phoenix, Arizona 85007

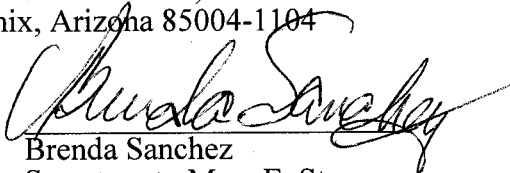
23  
24 W. Mark Sendrow, Director  
Securities Division  
ARIZONA CORPORATION COMMISSION  
25 1300 West Washington Street  
Phoenix, Arizona 85007

26  
27 ...

28 ...

1 ARIZONA REPORTING SERVICE, INC.  
2 2627 N. Third Street, Suite Three  
3 Phoenix, Arizona 85004-1104

4 By:

  
5 Brenda Sanchez  
6 Secretary to Marc E. Stern  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28